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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: :
Basil Pandolfelli a/k/a : Case No. 09-18941 (DHS)
Michael Pandolfelli :
Debtor. : Chapter 7

Marina District Development Co., LLC :
t/a Borgata :
Plaintiff, : Adv. Pro. No. 09-02074 (DHS)

v :
Basil Pandolfelli a/k/a :
Michael Pandolfelli :
Defendant. :
:

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

On the Brief:

Peter R. Bray, Esq.

INTRODUCTORY STATEMENT

This Memorandum is submitted on behalf of Defendant, Basil Pandolfelli (“Pandolfelli”) and in opposition to the Motion for Summary Judgment filed by Plaintiff, Marina District Development Co., LLC (“Borgata”).

Borgata seeks to secure a judgment determining that the so-called “counterchecks” delivered to the Borgata are non-dischargeable obligations of Pandolfelli.

The flaw in the Borgata’s application is quite simple. Borgata proceeds upon the premise that the counterchecks were drawn on Pandolfelli’s account and he is, therefore, liable for the non-payment of such checks when same were presented. However, the proofs presented demonstrate the fact that these counterchecks were drawn on the bank account maintained by RCA Capital Corporation at Capital One Bank. (See, the Statement of Material Facts presented by Borgata and Exhibit H to the Certification by Brian D. Schwartz, Esq.) Further, the claim that the account, at Capital One Bank, was closed where the checks were issued is demonstrably untrue. (See, the Exhibit H to the Certification of Brian D. Schwartz, Esq.) Moreover, Pandolfelli has certified, in his answers to interrogatories, that the Capital One Bank account usually had between \$50,000 to \$100,000 on deposit, and verily believed there were sufficient funds on deposit to cover the checks issued. (See, answers to Interrogatory Nos. 21 and 28 – Exhibit F to the Certification of Brian D. Schwartz, Esq.)

As a result, these counterchecks were the obligation of RCA Capital Corp., having been drawn on its account. Therefore, these counterchecks cannot represent a non-dischargeable obligation of Pandolfelli, since he cannot be personally liable for this corporate debt. See, Frank Rizzo, Inc. v. Alatsas, 27 N.J. 400 (1958).

CONCLUSION

For the reasons set forth, the application for Summary Judgment must be denied.

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By: /s/ Peter R. Bray
PETER R. BRAY

DATED: August 31, 2010